

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p style="text-align: center;">as representative of</p> <p>THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i>,</p> <p style="text-align: center;">Debtors.¹</p>	<p>PROMESA</p> <p>Title III</p> <p>Case No. 17-BK-3283 (LTS)</p> <p>(Jointly Administered)</p>
<p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p style="text-align: center;">as representative of</p> <p>THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i>,</p> <p style="text-align: center;">and</p> <p>THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ALL TITLE III DEBTORS (OTHER THAN COFINA),</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>PUERTO RICO PUBLIC BUILDINGS AUTHORITY,</p> <p style="text-align: center;">Defendant</p>	<p>Adv. Pro. No. 18-00149</p> <p><u>JOINT URGENT MOTION TO MODIFY SCHEDULING ORDER</u></p>

¹ The Debtors in these Title III cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481), (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566(LTS)) (Last Four Digits of Federal Tax ID: 9686), (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808), and (iv) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747).

and

PBA FUNDS, ASSURED, AND QTCB
NOTEHOLDER GROUP

Defendant-Intervenors.

Plaintiffs the Financial Oversight and Management Board for Puerto Rico (“FOMB”) and the Official Committee of Unsecured Creditors of All Title III Debtors (Other Than COFINA) (the “UCC”), and Plaintiff-Intervenor the Official Committee of Retired Employees of Puerto Rico (the “Retiree Committee,” and together with the FOMB and the UCC, “Plaintiffs”), Defendant Puerto Rico Public Buildings Authority (“Defendant”), and the PBA Funds,² Assured Guaranty Corp. (“AGC”), Assured Guaranty Municipal Corp. (“AGM,” and together with AGC, “Assured”) the QTCB Noteholder Group,³ National Public Finance Guarantee Corporation (“National”), Ambac Assurance Corporation (“Ambac”), the Lawful Constitutional Debt Coalition⁴ (together with Assured, National, Ambac, the QTCB Noteholder Group, and the PBA Funds, “Defendant-Intervenors,” and “Defendant-Intervenors” together with Plaintiffs and Defendant, “Movants” or the “Parties,” as applicable), as parties in this adversary proceeding (the “Adversary Proceeding”), respectfully submit this joint urgent motion (the “Motion”) for entry of an order, substantially in the form attached as **Exhibit A** hereto: (a) modifying the deadlines

² See *Fourth Supplemental Verified Statement of the PBA Funds Pursuant to Federal Rule of Bankruptcy Procedure 2019* [Case No. 17-3283-LTS, Dkt. No. 5991].

³ See *Second Supplemental Verified Statement of the QTCB Noteholder Group Pursuant to Bankruptcy Rule 2019* [Case No. 17-3283-LTS, Dkt. No. 4871].

⁴ See *First Supplemental Verified Statement of the Lawful Constitutional Debt Coalition Pursuant to Federal Rule of Bankruptcy Procedure 2019* [Case No. 17-3283-LTS, Dkt. No. 5807].

set forth in the Court's March 25, 2019 order (the "Initial Scheduling Order"), *see* Dkt. No. 65, (b) establishing a briefing schedule for the Adversary Proceeding, and (c) establishing dates and deadlines for fact discovery in the Adversary Proceeding. In support of this Motion, Movants state as follows:

1. On March 25, 2019, the Court issued the Initial Scheduling Order establishing (a) April 15, 2019 as the deadline for Plaintiffs to respond to the *PBA Funds', Assured's, and the QTCB Noteholder Group's Rule 12(c) Motion for Judgment on the Pleadings* (the "Rule 12(c) Motion") [Dkt. No. 63] and (b) April 29, 2019 as the deadline for the PBA Funds, Assured, and the QTCB Noteholder Group to file a reply in support of the Rule 12(c) Motion.
2. Certain of the Movants subsequently filed the *Joint Informative Motion Regarding Proposed Response Schedule for Counterclaims and Rule 12(c) Motion for Judgment on the Pleadings* [Dkt. No. 66] to notify the Court that Movants intended to meet and confer to develop a briefing schedule and discovery framework for the Adversary Proceeding.
3. Over the last two weeks, the Parties have met and conferred and, as a result, have developed the proposed briefing schedule and discovery framework (the "Proposed Schedule") described in greater detail below. Movants respectfully request that the Court enter an order substantially in the form attached hereto as Exhibit A approving the Proposed Schedule.

BRIEFING SCHEDULE FOR PLEADINGS AND RELATED MOTIONS

4. The Answers to the Complaint⁵ filed by the PBA Funds, *see* Dkt. No. 59, Assured, *see* Dkt. No. 67, and the QTCB Noteholder Group, *see* Dkt. No. 58, contain counterclaims (collectively, the "Counterclaims").
5. Plaintiffs have not yet answered these Counterclaims, but have represented that they

⁵ *See* Dkt. No. 1.

instead intend to move to dismiss these Counterclaims (such motion, a “Counterclaim Motion”). Plaintiffs have further represented that they do not intend for a Counterclaim Motion to address the merits of the Rule 12(c) motion. On April 9, 2019, Plaintiffs filed a consented to (or otherwise unopposed) Urgent Motion requesting that Plaintiff’s response deadline for certain of the counterclaims (filed by the QTCB Noteholder Group and the PBA Funds) be extended to April 17, 2019 (Dkt. 68). The Court granted the Urgent Motion (Dkt. 69). Through this Motion, the Parties seek to extend the deadline for Plaintiffs to respond to the counterclaims to April 24, 2019.

6. In light of the Court’s Initial Scheduling Order, and the granting of Plaintiffs’ Urgent Motion described in paragraph 5, above, and Movants’ and the Court’s desire to be efficient and address all motions directed at the pleadings, Movants propose to the Court and have agreed, subject to the Court’s approval, to the following schedule:

- a. Plaintiffs shall file on April 24, 2019, Plaintiffs’ response to the Counterclaims. If the response to the Counterclaims is a Counterclaim Motion as currently contemplated, Defendant-Intervenors shall file any opposition to the Counterclaim Motion on or before June 6, 2019, and Plaintiffs shall file any further reply in support thereof on or before July 12, 2019. Thereafter, the Court shall take the matter under submission for decision unless otherwise ordered by the Court.
- b. Plaintiffs’ and the Retiree Committee’s oppositions to the Rule 12(c) Motion shall be filed on or before June 6, 2019. Defendant-Intervenors’ reply in further support thereof shall be filed on or before July 12, 2019. To the extent that Defendant files a joinder or statement in support of the Rule 12(c)

Motion, Defendant's reply in further support thereof shall also be filed on or before July 12, 2019. Thereafter, the Court shall take the matter under submission for decision unless otherwise ordered by the Court.

- c. On May 9, 2019, Defendant shall file any joinder or statement in support of the Rule 12(c) Motion, and any such pleading shall be no more than 25 pages, exclusive of the cover page, the table of contents, the table of authorities, the signature page, and the certificate of service. If Defendant files such a joinder or statement in support of the Rule 12(c) Motion, Plaintiffs and the Retiree Committee shall have ten extra pages to respond in their June 6, 2019 oppositions to the Rule 12(c) Motion.
- d. Notwithstanding the briefing schedule proposed herein, and the fact that the Counterclaim Motion and the Rule 12(c) Motion will be briefed on parallel tracks, nothing contained herein shall be construed as a waiver or modification of the parties' rights concerning the Rule 12(c) Motion, including without limitation Plaintiffs' right to argue that the Rule 12(c) Motion was improperly filed before the close of the pleadings. While Plaintiffs reserve their rights with respect to any procedural arguments, they will address all of their defenses to the Rule 12(c) Motion in their June 6 filing.

DISCOVERY FRAMEWORK & PRE-TRIAL SCHEDULE

- 7. The Parties will exchange Rule 26(a)(1) disclosures within fourteen (14) days after the Rule 16(b) initial pretrial conference, to be scheduled for April 24, 2019 or on such other date set by the Court.
- 8. Initial demands for discovery, including requests for production and interrogatories shall

be served no earlier than April 24, 2019 and no later than May 31, 2019. Document production will commence on a rolling basis within 30 days of service of document demands. All document production shall be completed by August 1, 2019.

9. Fact depositions may commence as early as August 1, 2019. All fact depositions shall be completed by October 1, 2019.

10. Expert disclosures shall be served no later than October 1, 2019; rebuttal reports, if any, shall be served no later than October 30, 2019; and all expert depositions shall be completed by November 15, 2019. Final discovery cut-off will be November 15, 2019.

11. Dispositive motions shall be served no later than December 17, 2019, with a full briefing schedule to be determined.⁶

12. The Parties agree to work together to submit a stipulated protective order by April 19, 2019. Should they fail to agree on the form of order, the matter shall be brought before the Court by motion. Until the protective order is entered, all documents and information shall be kept confidential and treated as counsel's-eyes-only.

13. The Parties agree to serve and accept by e-mail all discovery requests and written responses and any other papers that are not filed with the Court. The serving Party shall attach the pleading or paper in PDF or other form of electronic file; if transmission of voluminous materials (such as a compendium of attachments or transcripts) as an e-mail attachment is impractical, then those materials shall be served by hand delivery or by overnight delivery via a service with the ability to "track" deliveries and verify receipt. If service by overnight courier has been used for these papers, it will be the equivalent of service by hand on the day of receipt.

14. The Parties agree to serve each other with all third-party subpoenas at the time of

⁶ Inclusion of a dispositive motion deadline does not presuppose the outcome of the pending 12(c) Motion. Rather, it is intended to provide a consensual schedule in the case where the Rule 12(c) Motion is denied.

issuance, as well as with all written objections, written responses, and documents produced by such third parties promptly after such materials are received.

15. The Parties reserve the right, on good cause shown, to seek a modification of the discovery schedule provided for herein.

CERTIFICATION OF COMPLIANCE

16. Pursuant to Rule 9013-1 of the Puerto Rico Local Bankruptcy Rules and ¶ I.H of the Case Management Order, the undersigned counsel hereby certify they have (a) carefully examined the matter and concluded there is a true need for urgent relief; (b) not created the urgency through any lack of due diligence; and (c) made reasonable, good-faith communications in an effort to resolve or narrow the issues that are being brought before the Court.

[Signature page follows]

Dated: April 12, 2019

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**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

<p>In re:</p> <p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p style="text-align: center;">as representative of</p> <p>THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i>,</p> <p style="text-align: center;">Debtors.¹</p>	<p>PROMESA</p> <p>Title III</p> <p>Case No. 17-BK-3283 (LTS)</p> <p>(Jointly Administered)</p>
<p>THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO,</p> <p style="text-align: center;">as representative of</p> <p>THE COMMONWEALTH OF PUERTO RICO, <i>et al.</i>,</p> <p style="text-align: center;">and</p> <p>THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ALL TITLE III DEBTORS (OTHER THAN COFINA),</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>PUERTO RICO PUBLIC BUILDINGS AUTHORITY,</p> <p style="text-align: center;">Defendant</p>	<p>Adv. Pro. No. 18-00149</p>

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and

PBA FUNDS, ASSURED, AND QTCB
NOTEHOLDER GROUP

Defendant-Intervenors.

**ORDER MODIFYING BRIEFING SCHEDULE AND ESTABLISHING DISCOVERY
AND PRE-TRIAL DEADLINES**

Upon consideration of the *Joint Urgent Motion to Modify Scheduling Order* (the “Motion”),²

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**.
2. Plaintiffs shall file on April 24, 2019, Plaintiffs’ response to the Counterclaims. If the response to the Counterclaims is a Counterclaim Motion as currently contemplated, Defendant-Intervenors shall file any opposition to the Counterclaim Motion on or before June 6, 2019, and Plaintiffs shall file any further reply in support thereof on or before July 12, 2019. Thereafter, the Court shall take the matter under submission for decision unless otherwise ordered by the Court.
3. On May 9, 2019, Defendant shall file any joinder or statement in support of the Rule 12(c) Motion, and any such pleading shall be no more than 25 pages, exclusive of the cover page, the table of contents, the table of authorities, the signature page, and the certificate of service. If Defendant files such a joinder or statement in support of the Rule 12(c) Motion,

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

Plaintiffs and the Retiree Committee shall have ten extra pages to respond in their June 6, 2019 oppositions to the Rule 12(c) Motion.

4. Plaintiffs' and the Retiree Committee's oppositions to the Rule 12(c) Motion shall be filed on or before June 6, 2019, and Defendant-Intervenors' reply in further support thereof shall be filed on or before July 12, 2019. To the extent that Defendant files a joinder or statement in support of the Rule 12(c) Motion, Defendant's reply in further support thereof shall also be filed on or before July 12, 2019. Thereafter, the Court shall take the matter under submission for decision unless otherwise ordered by the Court.

5. The Parties shall exchange Rule 26(a)(1) disclosures within fourteen (14) days after the Rule 16(b) initial pretrial conference, which shall occur at the omnibus hearing on April 24, 2019.

6. The Parties shall serve initial demands for discovery, including requests for production and interrogatories no earlier than April 24, 2019 and no later than May 31, 2019. Document production will commence on a rolling basis within 30 days of service of document demands. All document production shall be completed by August 1, 2019.

7. The Parties may commence fact depositions as early as August 1, 2019. All fact depositions shall be completed by October 1, 2019.

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9. The Parties shall serve any dispositive motions no later than December 17, 2019, with a full briefing schedule to be determined.

10. The Parties shall work together to submit a stipulated protective order by April 19, 2019. Should they fail to agree on the form of order, the matter shall be brought before the Court by motion. Until the protective order is entered, all documents and information shall be kept confidential and treated as counsel's-eyes-only.

11. The Parties shall serve and accept by e-mail all discovery requests and written responses and any other papers that are not filed with the Court. The serving Party shall attach the pleading or paper in PDF or other form of electronic file; if transmission of voluminous materials (such as a compendium of attachments or transcripts) as an e-mail attachment is impractical, then those materials shall be served by hand delivery or by overnight delivery via a service with the ability to "track" deliveries and verify receipt. If service by overnight courier has been used for these papers, it will be the equivalent of service by hand on the day of receipt.

12. The Parties shall serve each other with all third-party subpoenas at the time of issuance, as well as with all written objections, written responses, and documents produced by such third parties promptly after such materials are received.

13. The Parties shall reserve the right, on good cause shown, to seek a modification of the discovery schedule provided for herein.

14. The Court shall retain jurisdiction over the matters contained in this order, including the right to change or modify any of its terms, on the Court's own motion or pursuant to a showing of good cause.

Dated: _____, 2019

JUDITH GAIL DEIN
UNITED STATES MAGISTRATE JUDGE